

**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW JERSEY**

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PHILLIP SOMERVILLE,

Plaintiff,

v.

JERRY SPEIZALE, et al.,

Defendants.

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Civil Action No. 03-3718 (JAG)

**ORDER**

For the reasons expressed in the Opinion filed herewith,

IT IS on this 5<sup>th</sup> day of August, 2005,

ORDERED that Plaintiff's application to proceed in forma pauperis is hereby granted and the Clerk shall file the Complaint without prepayment of the filing fee; and

IT IS FURTHER ORDERED that the Complaint is DISMISSED for failure to state a claim upon which relief may be granted; and

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915(b), the Clerk shall forward a copy of this Order by regular mail to the warden of F.C.I. Raybrook; and

IT IS FURTHER ORDERED that Plaintiff is assessed a filing fee of \$150.00 which shall be deducted from his prison account, pursuant to 28 U.S.C. § 1915(b)(2), in the manner set forth below, regardless of the outcome of the litigation; and

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915(b)(1)(A), Plaintiff is assessed an initial partial filing fee equal to 20% of the average monthly deposits to the Plaintiff's prison account for the six month period immediately preceding the filing of the Complaint; when

funds exist, the agency having custody of Plaintiff shall deduct said initial fee from Plaintiff's prison account and forward it to the Clerk; and

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915(b)(2), until the \$150.00 filing fee is paid, each subsequent month that the amount in Plaintiff's prison account exceeds \$10.00, the agency having custody of Plaintiff shall assess, deduct from the Plaintiff's account, and forward to the Clerk payments equal to 20% of the preceding month's income credited to Plaintiff's prison account, with each payment referencing the docket number of this action; and

IT IS FINALLY ORDERED that the Clerk shall serve a copy of this Order and the accompanying Opinion upon Plaintiff at the following address and shall close the file: Phillip Somerville, Reg. No. 24593-050, F.C.I. Raybrook, P.O. Box 300, Ray Brook, New York 12977.

S/Joseph A. Greenaway, Jr.  
JOSEPH A. GREENAWAY, JR., U.S.D.J.